



EUROPEAN COMMISSION

Brussels, 19.03.2014  
C(2014) 1946 final

*Dear President,*

*The Commission would like to thank the Camera Deputaților for its Reasoned Opinion concerning the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office {COM (2013) 534 final} and for its further Opinion dated 27 December 2013.*

*In its Communication of 27 November 2013 {COM (2013) 851 final} the Commission carefully analysed the arguments presented by the Camera Deputaților from the perspective of the principle of subsidiarity, taking an open attitude and interpreting the arguments in the Reasoned Opinions, insofar as possible, in the light of the principle of subsidiarity. As a result of the thorough and careful analyses of the different arguments, the Commission concluded that its proposal of 17 July 2013 complies with the principle of subsidiarity and decided to maintain it. The Commission stressed, however, that during the legislative process, it will take due account of the Reasoned Opinions of the national Parliaments.*

*This letter addresses the arguments submitted by the Camera Deputaților which according to the Commission's assessment do not relate to the principle of subsidiarity and hence fall outside the scope of the subsidiarity control mechanism and the Communication. This letter also addresses additional comments put forward in the Opinion of 27 December 2013.*

*1) The Camera Deputaților asked the Commission to explain in greater detail the judicial review of procedural measures taken by the European Public Prosecutor's Office.*

*Article 86 of the Treaty on the Functioning of the European Union stipulates that the European Public Prosecutor's Office shall exercise the functions of prosecutor in the competent courts of the Member States. The proposal foresees that the European Public Prosecutor's Office is considered a national authority for the purpose of the judicial review of its acts of investigation and prosecution. Accordingly, all challengeable acts of investigation and prosecution of the European Public Prosecutor's Office would be reviewed by the national courts. This is without prejudice to the possibility of preliminary rulings pursuant to Article 267 of the Treaty, which will ensure that the proposed Regulation is applied uniformly throughout the Union. The Commission has taken note of the view expressed by the Camera*

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*Deputaților to introduce clearer rules on the judicial review of the European Public Prosecutor's actions, notably of his decisions to dismiss a case.*

*Concerning the procedural rules applicable during investigations carried out by the central level of the European Public Prosecutor's Office, the Commission would like to clarify that there would be no deviation from the rule that the law of the Member State applies, where the investigative measure takes place.*

*2) Regarding a collegial model, the Commission would like to point out that its proposal provides for a quasi-collegial forum at central level with the competence to decide on internal rules of procedure governing the organisation of the work of the European Public Prosecutor's Office. The options regarding structure are carefully examined during the inter-institutional phase of the decision-making process. In that context, the Commission attaches particular importance to safeguarding the principles of independence, accountability and efficiency of the European Prosecutor's Office.*

*3) As regards the qualifications according to national law of the European Delegated Prosecutors, the Commission would like to point out that it would be for the Member States to propose candidates for the position of a European Delegated Prosecutor. The Member States are free to nominate suitable candidates who possess the necessary qualifications required for national prosecutors.*

*4) Regarding the Camera Deputaților's request to remove instruction powers over European Delegated Officers, the Commission would like to recall the objective of the European Public Prosecutor's Office to ensure a Union-wide coherent and efficient approach in its investigations. To this end, some powers of the central office must be preserved to streamline the investigations of the different European Delegated Prosecutors.*

*In this context, concerning the prioritisation of cases, it is important to note, that it is one of the key objectives of the proposal to increase the priority given to investigations and prosecutions of the crimes affecting the Union's financial interests. It is the purpose of establishing such an Office, that these interests would not be subordinate to conflicting priorities the different national prosecution services might have.*

*5) As regards the concern expressed by the Camera Deputaților that there is a risk of overlap with or hindrance of national prosecution actions, because the term "financial interests of the Union" is not provided for in the proposed Regulation, the Commission would like to refer to Article 2 c) of the proposed Regulation which provides a definition of the term "financial interests of the Union".*

*6) The Commission is, furthermore, of the view that Articles 12 and 13 of the proposed Regulation in conjunction with the proposed Directive on the fight against fraud to the Union's financial interests by means of criminal law (COM (2012) 363) clearly delineate the competences of the European Public Prosecutor's Office and the national authorities respectively.*

7) *On the general regime of liability, the Commission would like to draw the attention to Article 69 of the proposal which is in line with Article 340 of the Treaty on the Functioning of the European Union. The Commission takes note of the view of the Camera Deputaţilor that there might be a need to establish a recovery procedure for the damages caused by actions of the European Public Prosecutor's Office.*

8) *In relation to the opinion expressed by the Camera Deputaţilor to introduce provisions related to the recovery of legal expenses advanced by the Member States, the Commission would like to underline that under the Treaties the obligation to counter fraud and other illegal activities affecting the financial interests of the Union remains equally with the Union and the Member States. The creation of the European Public Prosecutor's Office aims at protecting the EU budget as well as the proper and efficient functioning of the management of EU funds. This would be to the benefit of both, the EU as well as the Member States. Furthermore, the establishment of the European Public Prosecutor's Office would be conducive to reducing the expenses of the Member States, which, in the absence of the European Public Prosecutor's Office, would be solely responsible to carry out investigations in the cases concerning EU fraud.*

*As said above, the Commission will take due account of the views expressed by the national Parliaments during the legislative procedure.*

*The Commission hopes that these comments address the concerns raised by the Camera Deputaţilor and looks forward to continuing our political dialogue.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*